No. 21,509

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

MUTUAL INDUSTRIES, INC., RESPONDENT

On Petition for Enforcement of an Order of the National Labor Relations Board

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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JURISDICTION

This case is before the Court upon the petition of the National Labor Relations Board pursuant to Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, *et seq.*),[1] for enforcement of its order issued against Mutual Industries, Inc., (herein called the Company), on June 21, 1966. The Board's Decision and Order

[1] Pertinent statutory provisions are reprinted *infra,* pp. 21-23.

(R. 17-30, 36-37) are reported at 159 NLRB No. 73.[2] This Court has jurisdiction pursuant to Section 10 (e) of the Act, the unfair labor practices having occurred in Los Angeles, California, where the Company is engaged in the manufacture of bias binding and webbing.

STATEMENT OF THE CASE

I. The Board's Findings of Fact

In brief, the Board found that the Company violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union[3] after it had recognized the Union and conducted negotiations with it over a period of four months. The Board found that the Company also violated Section 8(a)(5) and (1) by promising the employees a health insurance plan to discourage them from joining or adhering to the Union. The facts upon which these findings are based are set forth below.

A. *The Union organizes the Company's employees; the Company signs a recognition agreement*

In February or March 1965, the Union commenced an organizational campaign at the Company's Los

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[2] References to the pleadings, the Decision and Order of the Board, and other papers, reproduced as "Volume I, Pleadings," are designated "R." References to the stenographic transcript of record reproduced pursuant to Court Rules 10 and 17 are designated "Tr." References designated "GCX" are to the General Counsel's exhibits. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

[3] Los Angeles Dress and Sportswear Joint Board, International Ladies Garment Workers' Union, AFL-CIO.

Angeles plant (R. 19; Tr. 249, 256).[4] In late March, after earlier communications on the subject of recognition by letter and telephone, Sam Schwartz a Union organizer, visited the Company's plant with Jack Spindler, a Union business agent (R. 19; Tr. 31-32, 128, GCX 9). There they met with David Meyers, the plant manager and Norman Gross, the Company's Los Angeles sales director. (R. 18-19; Tr. 247, 375, 349). Schwartz advised Meyers that the Union represented a majority of the Company's employees in the Los Angeles plant and proposed an agreement recognizing the Union as the exclusive bargaining representative of its employees (R. 19; Tr. 31-32, 128-129). Meyers agreed, suggesting that Schwartz prepare and bring the recognition agreement to him for signature (R. 19; Tr. 32, 129). Meyers also indicated that he would have to contact the Company's headquarters in Philadelphia, Pennsylvania, to obtain approval before he signed (R. 19; Tr. 129).[5] Schwartz told Meyers that Spindler would bring the employees'

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[4] All dates hereafter are in 1965 unless otherwise indicated.

[5] During the discussion, Meyers described certain management problems he was having at the plant, indicated that he would like to discharge certain employees, and pleaded for concessions from the Union since the plant had been in operation only a short time. Schwartz assured Meyers that in view of the infancy of the Los Angeles operation, the Union would try to give it "every break under the sun" (R. 19-20; Tr. 32-33, 130), but made it clear that as the bargaining representative of the employees the Union could not endorse the discharge of any employee. Instead, Schwartz suggested working out an agreement for a probationary period during which the Company could readily discharge new employees (R. 19; Tr. 129).

authorization cards to show to Meyers before he signed the recognition agreement (R. 20; Tr. 130-131).

On April 13, Spindler went to the plant and presented both the recognition agreement and ten authorization cards to Meyers (R. 20; Tr. 33-34, 41-42, 69-70).[6] The agreement which was dated April 12 and had been signed by John Ulene, the Union's manager, reads as follows:

> It is agreed that Mutual Industries of California, Inc., hereby recognizes the Los Angeles Dress and Sportswear ILGWU, AFL-CIO, as the bargaining agent of all of its production and maintenance employees (including shipping and receiving department employees) employed at its plant at 1118 Santa Fe Avenue, Los Angeles, California.
>
> The first negotiating conference for a collective-bargaining agreement shall take place April 12, 1965, and shall continue until concluded.
>
> It is the Company's intention at the present time that the final phase of negotiations will be undertaken by the principal officers of the Company who will shortly be in Los Angeles for that purpose (R. 20; G.C.X. 4).

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[6] On April 13, there were fourteen employees in the Union's production and maintenance unit (R. 23; Tr. 222-224). The Trial Examiner found that all ten cards shown to the Company that day validly designated the union as the bargaining representative (R. 23; Tr. 222-224, G.C. Exh. 3a-3j). The Board agreed as to nine cards: it did not rule on the tenth (employee Kardischian's) because her card was surplus to the Union's majority (R. 36, n. 1).

After looking at the authorization cards, Meyers signed the above agreement, remarking "I know you have this shop, and there will be no problems" (R. 20; Tr. 36, 41-42).[7]

B. *The Company consents to negotiations with the Union twice during the next four months*

About April 20, Spindler, on Schwartz's instructions, presented Meyers with a copy of a collective bargaining agreement prevalent in the garment industry. A few days later, Meyers advised Schwartz that he had sent the proposal to Dunn and that Dunn would be in Los Angeles about May 15. When Schwartz indicated that he would be in the East on that date, Meyers suggested that Schwartz telephone Dunn sometime during Schwartz' visit (R. 21; Tr. 137-138).

About May 12, Schwartz telephoned Dunn from Miami and requested a meeting to conclude an agreement on the basis of the Union's proposal. Dunn pleaded the newness of the Los Angeles operation; Schwartz promised to take this fact into account. Dunn asked Schwartz to call him on May 25. (R. 21; Tr. 131-141). When Schwartz called Dunn on that date, he was informed that Dunn was in Los Angeles (R. 21; Tr. 142). Schwartz then called Samuel Otto,

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[7] Meyers denied that the Union showed him its signed cards (Tr. 258). He admitted reading and signing the Union's document but asserted that the Union representatives had told him that its only purpose was to show that the Union was the first to attempt to organize his plant (Tr. 259). The Trial Examiner's resolution of this issue is discussed *infra*, p. 11.

the Union's Pacific Coast Director, and asked him to call Dunn in Los Angeles. Otto was unable to reach Dunn in Los Angeles. In late May, Otto visited Philadelphia and tried unsuccessfully to arrange a meeting with Dunn before returning to Los Angeles. Unable to do so, Otto turned the matter over to Samuel Ross, the manager of the Union's Philadelphia Dress and Sportswear Joint Board. (R. 21; Tr. 143, 175). Schwartz then sent Ross a copy of the same industry agreement given to Dunn and told Ross what concessions he could make (R. 21; Tr. 143; GCX 10).

On June 27, Ross and Dunn met at the latter's office and discussed, among other subjects, pay rates, apprenticeship, fringe benefits, and the Company's existing wage structure (R. 21; Tr. 176-181). No agreement was reached but Dunn told Ross that he would authorize Meyers to continue negotiations on these matters and to conclude an agreement (R. 21; Tr. 179-180). Accordingly, on July 1, in Los Angeles, Schwartz telephoned Meyers and a meeting was arranged for July 6 (R. 22; Tr. 156-157, 262). Wage rates were discussed in greater detail (R. 22; Tr. 156). After the meeting Schwartz, pursuant to Meyers' request, reduced the Union's wage proposal to written form. On July 14, he delivered the written proposal to Meyers, who forwarded it to Dunn. (R. 22; Tr. 54-55, 159).

C. *The Company breaks off communications with the Union without notice or explanation*

In the first week of August, Schwartz called Meyers to ask whether he had heard from Dunn. Meyers said

he had not and suggested that Schwartz deal directly with Dunn (R. 22; Tr. 159). Later that day and on the next business day Schwartz telephoned Dunn a total of four times. (R. 22; Tr. 159-160). Dunn refused to accept or return Schwartz's calls (R. 22; Tr. 370). According to Dunn's testimony, he terminated negotiations with the Union because of his belief that a majority of the employees did not want a union and that the Company was unable to pay the rates requested by the Union (R. 22; Tr. 389-391).

About August 23, Schwartz telephoned Meyers to learn whether he had heard from Dunn. Meyers said that Dunn would be in Los Angeles the next day; he agreed to have Dunn call Schwartz (R. 22; Tr. 160-161). The next day, August 24, Schwartz sent Dunn the following telegram at the Los Angeles plant:

> "Being you and your attorney are in Los Angeles. Request we meet for closing of collective bargaining agreement heretofore negotiated"

(R. 22; Tr. 161-162, GCX 11). Dunn never replied. (R. 22; Tr. 161-163)

The Union's last communication with the Company was in late August or early September when Robert Wachs, counsel for the Company, and Schwartz had a telephone conversation. Wachs asked if the Union would consent to an election, promising a fast election if the Union agreed. Schwartz referred Wachs to Feinberg, counsel for the Union, whereupon Wachs retorted, "Well, let me tell you this: if you don't con-

sent to an election, we could drag this thing around" (R. 22; Tr. 163).

D. *The Company announces plans for medical insurance*

Some time in July, foreman Anthony Elias announced to the employees that the Company was offering them a medical insurance plan in lieu of union representation. At the same time, he collected information regarding the employees' age and dependents for submission to the insurance carrier (R. 23; Tr. 74-75, 205, 208, 215-216, 218, 239). Admittedly, neither Meyers nor Dunn ever notified or bargained with the Union regarding a health insurance plan (R. 23; Tr. 313, 367).[8]

II. The Board's Conclusions and Order

On the basis of the foregoing facts, the Board found that the Company violated Section 8(a)(5) and (1) of the Act when it refused to bargain with the Union after it had recognized the Union's majority status and had entered into negotiations with it, and, again, when it bypassed the Union to bargain directly with the employees regarding a term and condition of employment (R. 25-26). The Board's Order directs the Company to cease and desist from the unfair labor practices found and from in any like or related man-

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[8] The plan was never put into effect; apparently the employees lost interest in it when they realized that the Company's contribution would be limited to securing a group policy and performing the required administrative work (R. 23; Tr. 215-216, 231-232, 268).

ner interfering with its employees' Section 7 rights. Affirmatively, the Board's order requires the Company to bargain with the Union upon request and to post appropriate notices (R. 27-28).

ARGUMENT

I. The Board Properly Found That the Company Violated Section 8(a)(5) and (1) of the Act by Refusing to Bargain With the Union After Initially Recognizing It and Commencing Negotiations

As shown in the Statement, pp. 2-7 the Company signed a recognition agreement with the Union on April 13, 1965, after the Union presented authorization cards signed by 10 of its 14 employees.[9] The Union promptly submitted a proposed contract. During the next four months, the Union's strenuous efforts to meet with the Company produced only two negotiating sessions. At the first session in Philadelphia on June 27, Vice-President Dunn reviewed the Union's contract proposal, particularly its wage demand, with Union representative Ross. At the second session on July 6, Plant Manager Meyers, at Dunn's direction, discussed the Union's wage demands in greater detail. At Meyers' request, the Union gave him its full wage proposal in written form on July 14; Meyers forwarded it to Dunn. Although he received the proposal, Dunn failed to respond. Instead, as he ad-

[9] The unit sought by the Union, and found appropriate by the Board, comprised the production and maintenance employees, including shipping and receiving department personnel, plus a single truckdriver (R. 23). See *Gordon Mills, Inc.*, 145 NLRB 771, 773.

mitted, he frustrated the Union's repeated efforts to get in touch with him, and refused thereafter to communicate with the Union. *Prima facie*, this conduct violated the Company's statutory duty to bargain.[10] In defense, the Company claims that it withdrew from negotiations on the basis of a good faith doubt of the Union's majority status. The Company also argues that the Union was never entitled to recognition. As we show below, both defenses were properly rejected by the Board.

A. *Substantial evidence on the whole record supports the Board's finding that the Company withdrew from bargaining to avoid a contract*

Before the Board, the Company's position was that the Union sought to discuss a contract with the Company but made no claim that it had organized the plant; that Meyers and Dunn agreed to such discussions as a matter of courtesy; and that Dunn subsequently broke off negotiations because the Union's wage proposal was too high, with no idea that the Union had, or claimed to have, a majority. Central to this defense is Meyers' assertion that he signed the April 13 recognition agreement in the belief that its sole import was to evidence the Union's having made the first attempt to organize the plant (Tr. 259, 260).

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[10] *N.L.R.B.* v. *Security Plating Company, Inc.*, 356 F. 2d 725, 727 (C.A. 9); *N.L.R.B.* v. *Hyde*, 339 F. 2d 568, 570 (C.A. 9); *Sakrete of Northern California, Inc.* v. *N.L.R.B.*, 332 F. 2d 902, 908-909 (C.A. 9); cert. denied, 379 U.S. 961, rehearing denied, 380 U.S. 926; *Colson Corp.* v. *N.L.R.B.*, 347 F. 2d 128 (C.A. 8), cert. denied, 382 U.S. 904; *N.L.R.B.* v. *Economy Food Center, Inc.*, 333 F. 2d 468, 471-472 (C.A. 7).

However, the Trial Examiner credited the testimony of Union representatives Schwartz and Spindler that Meyers had earlier agreed to sign a recognition agreement if Dunn had no objection; that Meyers flipped through the cards submitted by Spindler on April 13, saying "I know you have this shop and there will be no problems;" and that he then signed the recognition agreement. The Trial Examiner's resolution merits affirmance, based as it was on his unique opportunity to observe Meyers' demeanor on the witness stand.[11] Furthermore, Meyers' testimony strains credulity. As the Trial Examiner noted, Meyers was college-trained, with 18 years experience as production manager of a unionized plant prior to his employment by the Company. The recognition agreement (GCX 4) is short and unambiguous; admittedly, Meyers read it before he signed (Tr. 260, 288).[12]

The Trial Examiner was also entitled to reject Vice President Dunn's assertions that he was never apprised of the Union's claim to be the bargaining representative and did not learn that Meyers had executed a recognition agreement until after the Union filed an unfair labor charge (Tr. 362). As Dunn's testimony establishes, prior to his meeting with Un-

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[11] *N.L.R.B.* v. *Walton Mfg. Co.*, 369 U.S. 404, 408; *N.L.R.B.* v. *Local 776, I.A.T.S.E.*, 303 F. 2d 513, 518 (C.A. 9), cert. denied, 371 U.S. 826; *Shattuck Denn Mining Corp.* v. *N.L.R.B.*, 362 F. 2d 466, 469 (C.A. 9).

[12] It is also significant that Meyers denied receiving the Union's original request for recognition (GCX 9), whereas his pre-trial statement admitted that he received the letter and "immediately forwarded [it] to the Company in Philadelphia" (Tr. 274).

ion representative Ross on June 27, he made a careful study of the Union's proposed contract (Tr. 402). Dunn also admitted directing Meyers to meet with Union officials in Los Angeles in order to obtain the details of the Union's wage proposal (Tr. 404); the Union's proposal was then sent to Dunn (Tr. 405). It is hardly likely that Dunn, with responsibility for the Company's labor relations at five widely separated plants (R. 18), would have given this amount of time and attention to the proposals of a union which, according to Dunn, did not claim to represent the Company's employees.

Nor is it necessary to linger over Dunn's assertion that he terminated negotiations with the Union, in part, because he doubted the Union's majority status. As Dunn conceded, his doubt was founded entirely on assurances from Meyers that the Union had no majority (Tr. 376). We submit that Dunn's doubt can aspire to no greater validity than that of Meyers' doubt. For his part, Meyers admitted that his only information about the Union's status came from a single conversation with Foreman Anthony Elias which took place a month before Meyers executed the recognition agreement: he asked Elias if a majority of the employees were in favor of the Union, and Elias replied, according to Meyers, that "he didn't think they did" (Tr. 256). As the Trial Examiner observed, such information was "a flimsy basis on which to claim a good faith doubt as to the Union's majority" (R. 26).[13] Moreover, Elias, *a Company*

[13] Compare *N.L.R.B.* v. *Howe Scale Co.*, 311 F. 2d 502, 504 (C.A. 7) (a good faith doubt must have "a rational basis in

witness, testified that he had told Meyers only that "[s]everal people didn't want [the Union];" he expressly denied telling Meyers that a *majority* of the employees did not want the Union (Tr. 239).

In short, the Board was entitled to find that the Company recognized the Union on April 13 because it was satisfied about the Union's majority; that it entered upon negotiations reluctantly during the next four months; and that its withdrawal from negotiations after receiving the Union's wage demands was a "[rejection of] the collective bargaining principle" (R. 26).

B. *The Union was validly designated as the bargaining representative*

As related *supra*, pp. 3-7, beginning in February, the Union solicited the employees to sign a card designating the Union "to act exclusively as [their] agent and representative for the purpose of collective bargaining." During Meyers' first meeting with Union representatives Spindler and Schwartz late in March, Meyers acquiesced in the Union's suggestion that he sign a recognition agreement without raising any question about the Union's majority status.[14] When Meyers executed the recognition agreement at

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fact"); accord, *N.L.R.B.* v. *John S. Swift Co.*, 302 F. 2d 342, 346 (C.A. 7).

[14] While Meyers could remember little about this meeting, he testified that he may have believed Spindler when the latter told him (on an occasion unspecified) that the Union had a majority because "I have never known him to lie to me" (R. 20; Tr. 276).

the April 13 meeting after examining the Union's cards, it was with the statement "I know you have this shop, and there will be no problems" (R. 20; Tr. 36, 41-42). Thereafter, the Company evaded most of the Union's efforts to bring it to the bargaining table, but never challenged the Union's majority. Nor did Company Vice President Dunn indicate doubt about the Union's status when he made himself unavailable to the Union after receiving its wage proposal. Thus, it was during the hearing that the Company for the first time disputed the Union's right to recognition, claiming that it had been dubious about the Union's majority from the beginning. Having formally recognized the Union and having engaged in negotiations with it for some four months without questioning the Union's representative status, we submit that the Company may not be heard to claim that the Union was not entitled to be recognized.[15]

In any event, the record fully supports the Board's finding that the Union had 9 valid authorization cards on April 13 when it executed a recognition agreement covering the Company's 14 unit employees. Contrary to the Company, the Trial Examiner properly received in evidence the cards signed by employees Rodriguez, Hill and Thomas, although they did not testify. The cards were authenticated by Trudy Slaughter, a Union organizer, who testified that the trio signed the cards in her presence (R. 24; Tr. 18-22). The law

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[15] See, *Retail Clerks Union, Local No. 1179* v. *N.L.R.B. (John P. Serpa, Inc.)*, C.A. 9, No. 20,781, decided March 28, 1967; *Snow & Sons* v. *N.L.R.B.*, 308 F. 2d 687, 693-694 (C.A. 9).

is settled that authorization cards may be authenticated by a witness to their execution. *N.L.R.B.* v. *Howard Cooper Corp.*, 259 F. 2d 558, 560 (C.A. 9); accord: *Colson Corp.* v. *N.L.R.B.*, 347 F. 2d 128, 134 (C.A. 8), cert. denied, 382 U.S. 904; *N.L.R.B.* v. *Economy Food Center, Inc.*, 333 F. 2d 468, 471 (C.A. 7).

Nor is there merit in the Company's contention that the designations of Mario and Eloy Elias are vitiated by misrepresentations made to them at the time they signed their cards. Where, as here, authorization cards are "wholly unambiguous" in designating the Union as bargaining representative, only the clearest evidence that some *material misrepresentation* preceded the signing of the cards will interdict the conclusion that the employees signed them for the stated purpose. *N.L.R.B.* v. *Cumberland Shoe Corp.*, 351 F. 2d 917, 920 (C.A. 6); accord: *N.L.R.B.* v. *Gotham Shoe Mfg. Co.*, 359 F. 2d 684, 686 (C.A. 2), and cases cited; *Amalgamated Clothing Workers* v. *N.L.R.B., (Hamburg Shirt Corp.)*, 371 F. 2d 740 (C.A. D.C.); *N.L.R.B.* v. *Glasgow Co.*, 356 F. 2d 476, 478-479 (C.A. 7); *Happach* v. *N.L.R.B.*, 353 F. 2d 629, 630 (C.A. 7). For example, clear proof that a solicitor told an employee that obtaining a Board election was the *sole* purpose of signing a card will serve to invalidate the execution of even an unambiguous card. For, such a representation contradicts the card's declared purpose and is calculated to coax an authorization from employees who might not otherwise give it. Cf. *Englewood Lumber Co.*, 130 NLRB 394, 395, 408. In contrast, a card is not rendered invalid because the

signer was told that obtaining an election was one purpose of the cards. For, this representation neither contradicts the statement on the card nor requires the inference that the employee would not have signed the card had he known that the Union might obtain recognition without a Board election. *N.L.R.B.* v. *Hyde*, 339 F. 2d 568, 571-572 (C.A. 9); and cases cited above.

Applying this standard, the Trial Examiner properly ruled that Mario and Eloy Elias' cards effectively designated the Union. Thus, Mario Elias signed his card at the Union hall, having gone there to tell Union agent Spindler that he was about to start work for the Company (Tr. 95-96). After discussing the fact that the Company was not yet organized, Mario filled out the whole card except the date and gave it to Spindler (R. 99). The Company relies on Mario's testimony that Union representative Spindler asked him to sign a card so that Spindler "could have more authority to go into the shop and talk to the workers there to join the Union," and that Spindler stated that he (Spindler) "couldn't go in there without permission that the workers wanted to see him" (Tr. 97, 98). This testimony falls far short of showing that Mario was induced to sign a card by a material misrepresentation. For there is no evidence that Spindler told him that the *only purpose* of the card was to gain Spindler admission to the plant. Indeed, the cited testimony shows that Mario understood that by signing a card he was helping Spindler to organize the Company's employees. Under the circumstances, the Board could fairly conclude that Mario signed

the Union's straight-forward card because he wanted the Union to represent him *and* because he believed that signing a card would facilitate organizing the plant. This conclusion is buttressed by the fact that he was a member of the Union—and had been for some eight years—when he signed the challenged card (Tr. 94-95).

In Eloy Elias' case, the Company cites his testimony that Spindler said to him: "This card doesn't mean anything. We just like to know how many people are going to be in here so we can keep other names, and we will establish a union, see if we can get a union" (Tr. 115-116). But Eloy also testified that he had been a member of the Union for some five years (Tr. 111), that he had taken out a withdrawal card because he changed to another kind of work (Tr. 110), and that he did not read the Union's authorization card before signing it "because [he] knew what it was"—i.e., a card "giving permission to the Union to . . . represent me" (Tr. 111).

In sum, the Union was the validly designated majority representative on April 13, 1965, when the Company executed a recognition agreement, and in August of that year when the Company admittedly broke off negotiations with it. Since, as shown in the preceding section, the Company lacked any justification under the Act, the Board properly found that its withdrawal from the negotiations violated Section 8(a)(5) and (1). See, in addition to cases cited *supra* p. 10, n. 10, *N.L.R.B.* v. *Kellogg's, Inc.*, 347 F. 2d 219, 220 (C.A. 9); *N.L.R.B.* v. *Niskayuna Con-*

sumers Cooperative, F.2d (C.A. 2), 64 LRRM 2127, 2128.

II. The Board Properly Found That the Company's Offer of Medical Insurance "in Place of a Union" Violated Section 8(a)(5) and (1) of the Act

As shown above, p. , uncontradicted testimony established that in July 1965, Foreman Elias announced to the employees that the Company was offering a group hospitalization plan as a substitute for union representation. Admittedly, neither Meyers nor Dunn consulted or bargained with the Union at any time regarding such a benefit. Since the Union was the designated representative of the Company's employees—and the Company was in fact negotiating with the Union in July—the Company was under a duty to deal with the Union exclusively regarding the wages, hours and conditions of employment of the unit employees.[16] *Medo Photo Supply Corp.* v. *N.L.R.B.*, 321 U.S. 684. The fact that Elias' words presented hospital insurance and union representation as alternatives, justified the Board's conclusion that the announcement was intended "to discourage the employees from joining or adhering to the Union" (R. 26). But, irrespective of the Company's motive, its unilateral action derogated from its bargaining obligation to the Union and violated Section 8(a)(5)

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[16] Of course, a group hospitalization plan is "a term [or] condition of employment" within the meaning of Section 8 (d) of the Act. *W. W. Cross & Co.* v. *N.L.R.B.*, 174 F. 2d 875, 878 (C.A. 1); *Ken's Building Supplies, Inc.* v. *N.L.R.B.*, 333 F. 2d 84, 87 (C.A. 6).

and (1) of the Act. *N.L.R.B.* v. *Katz*, 369 U.S. 736, 743 and cases cited. See also *N.L.R.B.* v. *Hyde*, 339 F. 2d 568, 572 (C.A. 9); *N.L.R.B.* v. *Kit Mfg. Co.*, 335 F. 2d 166, 167 (C.A. 9), cert. denied, 380 U.S. 910; *N.L.R.B.* v. *Yutana Barge Lines, Inc.*, 315 F. 2d 524, 529-530 (C.A. 9); *Carpinteria Lemon Association* v. *N.L.R.B.*, 240 F. 2d 554, 557 (C.A. 9), cert. denied, 354 U.S. 909.

CONCLUSION

For the reasons stated, it is respectfully submitted that a decree should issue enforcing the Board's order in full.

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April 1967.

Certificate

The undersigned certifies that he has examined the provisions of Rules 18 and 19 of this Court and in his opinion the tendered brief conforms to all requirements.

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APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

Unfair Labor Practices

Sec. 8.(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

* * * *

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other

terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: * * *

* * * *

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10 * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

* * * *

(e) The Board shall have power to petition any court of appeals of the United States, . . . within any circuit . . . wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein,

and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

APPENDIX B

Pursuant to Rule 18.2(f) of the Rules of the Court.

GENERAL COUNSEL'S EXHIBITS

Exhibit No.	Identified	Received	Rejected
1(a) through 1(n)	7	7	
2	9	9	
3(a) through 3(e)	17	221	
4	33	43	
3(f) through 3(j)	37	221	
5	47	47	
6	48	49	
3(k) through 3(n)	50	221	
3(o)	50		
7(a) and (b)	101		
8	122		
9	127	127	
10	143	144	
11	161	162	
12	185		
13	191		
14	200		
15	207		
16(a) and (b)	220		
17			305
18	387		

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